

6/19/2009

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel.  
4 W.A. DREW EDMONDSON, in his capacity as  
5 ATTORNEY GENERAL OF THE STATE OF  
6 OKLAHOMA and OKLAHOMA SECRETARY  
7 OF THE ENVIRONMENT C. MILES TOLBERT,  
8 in his capacity as the TRUSTEE FOR NATURAL  
9 RESOURCES FOR THE STATE OF OKLAHOMA,

10 Plaintiffs,

11 vs. No. 05-CV-0329 GKF-SAJ

12 TYSON FOODS, INC., TYSON POULTRY, INC.,  
13 TYSON CHICKEN, INC., COBB-VANTRESS, INC.,  
14 AVIAGEN, INC., CAL-MAINE FOODS, INC.,  
15 CAL-MAINE FARMS, INC., CARGILL, INC.,  
16 CARGILL TURKEY PRODUCTION, LLC,  
17 GEORGE'S, INC., GEORGE'S FARMS, INC.,  
18 PETERSON FARMS, INC., SIMMONS FOODS, INC.,  
19 and WILLOW BROOK FOODS, INC.,  
20 Defendants.

21 DEPOSITION OF QUANG PHAM  
22 TAKEN ON BEHALF OF THE DEFENDANTS  
23 ON APRIL 30, 2009, BEGINNING AT 9:07 A.M.  
24 IN OKLAHOMA CITY, OKLAHOMA

25 APPEARANCES:

On behalf of the PLAINTIFF:

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Reported by: LANA L. PHILLIPS, CSR, RPR

6/19/2009

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14 (By telephone) On behalf of the DEFENDANT

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18 Also present: Teena Gunter

6/19/2009

1 QUANG PHAM,  
2 having been first duly sworn, deposes and says in  
3 reply to the questions propounded as follows:

4 DIRECT-EXAMINATION

5 BY MS. LONGWELL:

6 Q Please state your full name for the  
7 record.

8 A My full name is Quang, Q-u-a-n-g, and  
9 last name is Pham, P-h-a-m. Quang Pham.

10 Q Mr. Pham, could you please tell me your  
11 current -- who your current employer is?

12 A My current employer is Division of  
13 Agricultural Environmental Management Service of  
14 the Oklahoma Department of Agriculture, Food, and  
15 Forestry.

16 Q How long have you been in that current  
17 position?

18 A I have been since September 2002.

19 Q What is your current job in the division  
20 of -- and I'm going to abbreviate it -- AEMS of  
21 ODAFF.

22 A That's correct, yes.

23 Q What is your position there?

24 A I am an environmental engineer.

25 Q Is that the title you hold at that -- at

6/19/2009

1 required. But the contents are similar. The  
2 essential part of either AWMP or CNMP is come up  
3 with the application rate of the litter, so to be  
4 sure there will be no runoff the field of  
5 pollutants of any sort to the waters of the  
6 state.

7 Q That's the general purpose of both the  
8 AWMP and the CNMP?

9 A That's correct.

10 Q Are there any additional requirements in  
11 a CNMP that are not contained in an animal waste  
12 management plan?

13 A The -- let me see. In the CNMP there's  
14 a part -- there's a -- two parts, I believe, that  
15 is not included in AWMP; that is, feeding  
16 management and what they call other optional  
17 utilization of litter. Those are not covered in  
18 the AWMP.

19 Q Let's talk about those two things. When  
20 you say "feeding management," tell me what the  
21 CNMP requires with regard to feeding management.

22 A The -- at this point in time, the CNMP  
23 is very briefly involved with that. In the  
24 feeding operation, they have different feeds --  
25 like, they may add phytase or some other thing in

6/19/2009

1 So based on that, we'll prepare the  
2 draft CNMP. After we prepare the draft CNMP, we  
3 send back to the inspector for him to look it  
4 over to be sure it's in accordance with what he  
5 reports to us through the survey form. And also  
6 he has a chance to visit with the grower, to make  
7 sure what we put in there is accurate. So that  
8 is a preliminary draft.

9 And after they go through that kind of  
10 preliminary review, they send it back to us and  
11 say it's okay or needs some modification, and we  
12 do that.

13 And the next step, we send it to NRCS  
14 for their review, for the technical review and  
15 approval. And once the technical review and  
16 approval is done, we prepare the final version  
17 and send out so the grower and the district  
18 conservationist of the area.

19 Q So once you receive the initial  
20 information or the initial feedback from the  
21 poultry inspector in the field, how do you  
22 determine what the CNMP is going to contain for  
23 that field or for that grower?

24 A I think about three or four parts  
25 essential of a CNMP is, number one, to determine

6/19/2009 |

1 the rate of application, and want to be sure they  
2 have adequate storage. And also they have the  
3 conservation practices or sometimes they're  
4 called best management practices to prevent any  
5 runoff of the pollutant to the stream.

6 So we look over all of that based on the  
7 map and the information, and we come up with the  
8 application rate.

9 Q Tell me what -- what information do you  
10 use as a -- what technical information do you use  
11 as a guide to determine the rate of application?

12 A We go by the Code 590 of the NRCS.

13 Q Do you know if that's different -- is  
14 the rate of application determined differently  
15 under the animal waste management plan than under  
16 the CNMPs?

17 A No. They're the same. Same way. We go  
18 by the same Code 590.

19 Q And the best management practices, what  
20 technical material do you look at to determine  
21 whether or not the poultry operation has  
22 implemented appropriate best management plans?

23 A The conservation practice or best  
24 management practices we focus in the water body  
25 in the area, specifically, like, a well, the

6/19/2009

1 pond, or any stream nearby. And we put in the  
2 buffer or the setback 100 feet or 50 feet from  
3 those water course or water body.

4 Q So if upon inspection a poultry  
5 inspector doesn't see that there are these  
6 appropriate setbacks or buffers between the water  
7 bodies associated with that piece of land and the  
8 litter application site, do you then in the CNMP  
9 require that operator to put those in place in  
10 order to land apply poultry litter under the  
11 plan?

12 A The CNMP is a document that we say that  
13 you need to stay away 100 feet from a pond, for  
14 example. That's a buffer or the setback. And we  
15 send out there to the PFO. And then, you know,  
16 whether the PFO actually do it on every day any  
17 time they land apply, we don't know. Because the  
18 poultry inspector just goes out there and makes  
19 inspection once a year.

20 So the document is there. But whether  
21 they properly implement it, I don't know.

22 Q Okay. I guess maybe my question kind of  
23 got lost. And I'm not sure, but maybe I wasn't  
24 articulate enough in asking it.

25 And that is, does the CNMP ever require

6/19/2009

1 talked about with regards to the pollution  
2 prevention plan and -- are there any other  
3 differences between it and an animal waste  
4 management plan for a registered poultry feeding  
5 operation?

6 A I have to make a differentiation here.  
7 In the poultry feeding operation Act or poultry  
8 feeding operation rules, I don't see any place in  
9 there talking about pollution prevention plan.

10 Pollution prevention plan normally  
11 talking cattle CAFO, dairy CAFO, and swine  
12 facilities. So as far as I remember that, either  
13 AWMP or CNMP were mentioned in the poultry  
14 feeding operations rules and Act, but not  
15 pollution prevention plan.

16 Q Okay. Let's talk about the purpose -- I  
17 think we kind of talked about the purpose of an  
18 animal waste management plan across the board.

19 How -- what would you say the purpose of  
20 the plan is?

21 A The AWMP or CNMP?

22 Q Well, haven't we agreed that they're  
23 pretty much the same thing?

24 A Yes.

25 Q So what is the purpose of the plan?



6/19/2009 |

1 A The purpose of the plan is the guidance  
2 to the poultry feeding operations or CAFO to  
3 follow, to prevent any runoff or pollutants off  
4 of the application site.

5 Q Is the expectation that if a poultry  
6 operator follows that -- either the CNMP or the  
7 animal waste management plan -- that there will  
8 be no runoff of phosphorus from the fields where  
9 litter is applied?

10 MR. HAMMONS: Object to the form.

11 THE WITNESS: If they comply with the  
12 requirement as stated, I don't think that there's  
13 any other pollutant would leave the site --  
14 runoff pollutant leaving the site.

15 The fact is we're required to have the  
16 setback and the buffer area, and those setback  
17 and buffer area would absorb of any extra runoff  
18 from the application site.

19 So if they comply with application rate  
20 and they adhere to the buffer zone and the  
21 setbacks, there will be no pollution caused by  
22 the PFO to the water course. And say that they  
23 have to comply with one of those things.

24 Q (BY MS. LONGWELL) And those are -- the  
25 litter application rate is sort of a fluctuating